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**MASTER DECLARATION OF RESTRICTIVE COVENANTS,  
CONDITIONS, RESERVATIONS AND EASEMENTS FOR  
AVILA AT PALENCIA**

THIS MASTER DECLARATION is made this 15th day of December 2004, by  
CROSSWINDS AT PALENCIA, LLC, a Florida limited liability company (the "Developer").

**BACKGROUND**

A. Developer is the owner of a parcel of land located in St. Johns County, Florida, legally described on Exhibit "1" hereto (the "Property") on which Developer presently plans, but has not committed, and does not hereby commit itself, to develop residential living community, together with other amenities and facilities for the common use and enjoyment of the Owners (as hereinafter defined) of all Units (as hereinafter defined) pursuant to a general plan of development, such development on the Property to be known as "Avila at Palencia;" and

B. In order to (i) insure that such general plan of development is adhered to; (ii) establish certain continuing relationships in the form of mutual rights and obligations between Developer and the persons who acquire ownership of Units (as hereinafter defined) developed in Avila at Palencia by Developer, and their respective successors, with respect to use, enjoyment and maintenance of certain areas and facilities within Avila at Palencia, and (iii) protect, preserve, and enhance the value of the Avila at Palencia, Developer has determined that this Declaration, establishing certain easements, servitudes, restrictions, and conditions in the form of covenants running with the land shall be binding upon, enforceable against and inure to the benefit of all such present and future owners of property developed within Avila at Palencia and shall run with title to the land hereby and hereafter subjected to it.

NOW, THEREFORE, Developer hereby declares that title to the Property, and to all Units (as hereinafter defined) now and hereafter existing thereon shall be held, sold, conveyed, encumbered, used and occupied subject to the terms and conditions of this Declaration as covenants running with the land enforceable as aforesaid.

## ARTICLE I

### DEFINITIONS

Section 1. The following terms when used in this Declaration shall have the following meanings:

(a) "Articles" means the Articles of Incorporation of the Association (as hereinafter defined). A copy is attached as Exhibit "2."

(b) "Association" shall mean and refer to the Avila at Palencia Master Association, Inc., a non-profit Florida corporation, whose purpose is to administer the Common Property (as hereinafter defined) in accordance with the provisions of this Declaration and the governing documents of the Association.

(c) "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration."

(d) "Building" means a separate detached structure in the usual sense.

(e) "Bylaws" means the Bylaws of the Association. A copy is attached as Exhibit "3."

(f) "Common Assessment" shall mean the charge against each Owner (as hereinafter defined) and his or her Unit (as hereinafter defined), representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Common Property.

(g) "Common Expense" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacements of the Common Property (as hereinafter defined), including unpaid Special Assessments (as hereinafter defined), including those costs not paid by the Owner (as hereinafter defined) responsible for payment; the costs of any and all commonly metered utilities, cable or master television charges, and other commonly metered charges for the Common Property; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, gardening and other services benefiting the Common Property, and any recreational facilities thereon; the costs of fire, casualty and liability insurance, workmen's compensation insurance and other insurance covering the Common Property; the costs of bonding of the members of the management body; taxes paid by the Association, including real property taxes for the Common Property; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Property, or portions thereof; and the costs of any other expenses incurred by the Association for any reason whatsoever in connection with the Common Property for the benefit of all of the Owners.

(h) "Common Property" shall mean and refer to those portions of the Property which are intended to be devoted to the common use and enjoyment of the Owners (as hereinafter defined) of Units (as hereinafter defined).

(i) "Developer" means, as aforesaid, and its successors and assigns who acquire title to any portion of Avila at Palencia for the purpose of development so long as Crosswinds at Palencia, LLC, a Florida limited liability company, assigns its rights hereunder to such persons by express assignment or by operation of law.

(j) "First Mortgagee" shall mean and refer to an Institutional Lender (as hereinafter defined) which holds a first mortgage encumbering any Unit (as hereinafter defined) and which has notified the Association in writing that it holds same.

(k) "Institutional Lender" shall mean and refer to a commercial or savings bank, savings and loan association, mortgage company, life insurance company, pension fund, business trust or governmental agency or corporation, including, but not limited to, a real estate investment trust, or any assignee of a loan made by any such lender, or any private or governmental institution which has insured the loan of the lender or any combination of the foregoing entities.

(l) "Lake" shall mean and refer to any body of water designated in a site plan or plot plan as a "Lake" or that actually functions as a water body.

(m) "Land Use Documents" shall mean this Declaration, the Articles and Bylaws.

(n) "Member" shall mean and refer to an Owner (as hereinafter defined) whom is a member of the Association as provided in Article III hereof. The Association has Class "A" and Class "B" Members as defined in its Articles of Incorporation.

(o) "Notice" shall mean and refer to:

(i) Written notice delivered personally or mailed to the last known address of the intended recipient, in the manner set forth herein;

(ii) Notice published at least once each week for two (2) consecutive weeks in a newspaper having general circulation in St. Johns County, Florida; or

(iii) Notice given in any other manner provided in the Bylaws of the Association.

(p) "Open Space" shall mean and refer to those portions of the Property so designated in any supplemental declaration pursuant hereto which constitute open area, clear from the ground upward, devoid of residential buildings, accessory structures and parking area; except, however, those buildings used exclusively for recreational purposes.

(q) "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Unit (as hereinafter defined) or to any Unit developed by Developer upon any portion of the Property subject hereto but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any holder of a mortgage encumbering a Unit unless and until such holder has acquired title thereto pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

(r) "Restricted Common Property" shall mean any portion of the Common Property (such as, but not limited to, automobile parking spaces), designed for the exclusive use of particular Owners, as are, from time to time, designated by amendment or supplement to the Declaration.

(s) "Roads" shall mean those private streets, roads, terraces, drives, cul-de-sacs, courts and avenues, including the entire right-of-way, as from time to time are improved and exist within any portion of the Property subjected hereto.

(t) "Property Owners Declaration" means the Declaration of Covenants and Restrictions for Palencia, as recorded in the Public Records of St. Johns County, Florida at O.R. Book 1666, Page 807, *et seq.*, and all recorded exhibits thereto, as they have been amended and may be amended from time to time and to which the Declaration of Condominium is subject. Provision is made in the Property Owners Declaration for establishment of the Palencia Property Owners Association of St. Johns County, Inc. (the "Property Owners Association").

(u) "Special Assessments" shall mean a charge against a particular Owner and his or her Unit (as hereinafter defined), directly attributable to the Owner, equal to the cost incurred by the Association for capital expenses of for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

(v) "Sub-Association" shall mean and refer to any corporation so identified in a supplemental declaration filed by the Developer, or a designated successor, as an association formed for the purpose of administering and maintaining all or any portion of the Property.

(w) "Supplemental Declaration" Any declaration subsequently filed by Developer making reference to this Declaration.

(x) "Unimproved Living Unit" shall mean and refer to a Unit (as hereinafter defined) owned by, or located on land owned by the Developer, for which a certificate of occupancy has not been issued by the appropriate governmental authority or which has not been conveyed by the Developer to a Class "A" Member of the Association.

(y) "Unit" shall mean and refer to any portion of a Building situated upon the Property designed and intended for use and occupancy as a residence by a single family, including a unit in a condominium submitted on the Property. The Developer may also designate land as a Unit by a Supplemental Declaration.

## ARTICLE II

### OWNER'S PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner of a Unit shall have a right and easement of ingress and egress and of use and enjoyment in, to and over the Common Property which shall be appurtenant to and pass with title to it, subject to the following provisions:

(a) The right of the Association to reasonably limit the number of guests of Owner using the Common Property.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Property and to limit such use as necessary in a reasonable and non-discriminatory manner.

(c) The right of the Association in accordance with its Articles and Bylaws, and this Declaration, to borrow money for the purpose of improving the Common Property and, subject to the provisions of Article V of this Declaration, to mortgage, pledge, or hypothecate any or all of the real or personal property, respectively owned by each, as security for money borrowed or debts incurred, provided that the Developer consents to same so long as it remains a Member. Provided further that the rights of any such mortgagee shall be subordinated to the use and enjoyment rights of the Owners herein.

(d) The right of the Association to suspend the voting rights and right to use the Common Property (except to the extent needed as a means of ingress and egress) of an Owner for any period during which any assessment or dues against or due from his or her Unit remains unpaid and delinquent, and for a period not to exceed ninety (90) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or right to use the Common Property, shall be made only by the Board of Directors of the Association, after notice and an opportunity for a hearing as provided in the Bylaws of the Association.

(e) Subject to the provisions of Article V of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless Members entitled to cast two-thirds ( $2/3^{\text{rds}}$ ) of the voting power of each class of Members in the Association agree to such dedication, release, alienation or transfer, and with the consent thereto of the Developer so long as it remains a Member.

(f) The right of the Developer (and its sales agents, customers and representatives) to the non-exclusive use of the Common Property and the facilities, without charge, for sales, leasing, display, access, ingress, egress and exhibit purposes to sell and for lease and market any Unit within Avila at Palencia.

(g) The right and obligation of the Association to designate particular automobile parking spaces per and other facilities located on the Common Property as Restricted Common Property to be used exclusively by the Owner of a particular designated Unit as an appurtenance thereto.

(h) The right of the Property Owners Association access in, on, over and upon those portions of the Common Property as may be reasonably necessary for the purpose of access to and maintenance of the common area of Palencia, including the surface water or stormwater management system.

Section 2. Delegation of Use. Any Owner may extend or delegate, as the case may be, in accordance with the Bylaws, his or her right of enjoyment to the Common Property and facilities to the members of his or her family, or to his or her subject to reasonable regulation by the Board.

Section 3. Easements for Parking. Temporary guest or recreational parking shall be permitted within the Common Property only within spaces and areas clearly marked for this purpose. The Association, through its officers, committees and agents, is hereby empowered to establish parking regulations and to enforce these parking regulations by all means lawful for such enforcement on Roads and other parts of the Common Property, including the removal of any violating vehicle by those so empowered.

Section 4. Easements for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Common Property reserved herein, there shall be, and Developer hereby reserves and covenants for itself with respect to all portions of the Property, whether or not presently subjected to this Declaration and for and on behalf of all future Owners within Avila at Palencia, that Developer and each and every Owner shall have a non-exclusive easement appurtenant, to such property as each owns, for pedestrian and vehicular traffic over all Roads within the Common Property, subject to the parking provisions set forth in Section 3 of Article II hereof.

Section 5. Easements for Public Service Use. In addition to the foregoing easements over the Common Property, there shall be, and Developer hereby reserves and covenants for itself and all future Owners within Avila at Palencia, easements and the right to grant same for public services, including, but not limited to, utilities and the right of the police to enter upon any part of the Common Property for the purpose of enforcing the law.

Section 6. Waiver of Use. No Owner may exempt him or herself from personal liability for Common or Special Assessments (collectively the "Assessments") duly levied by the Association, or release the Unit owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Property or by abandonment of his or her Unit.

Section 7. Title to the Common Property. When title to all Units that will be developed by Developer within Avila at Palencia, has been conveyed by Developer to purchasers thereof, or sooner at the option of the Developer, the Developer shall convey to the Association the fee simple title to the Common Property and the Association shall each accept such conveyance. The Developer, and thereafter the Association, shall hold title to the Common Property for the

benefit of those persons entitled to use same under the provisions hereof. Developer may mortgage the Common Property to finance the original development and construction thereof, provided that (i) the lender recognizes the rights of the Owners hereunder, (ii) except as hereafter provided the Common Property shall be free of mortgages at the time of conveyance to the Association, and (iii) except as hereafter provided, the Association shall be personally liable for payment of same.

### ARTICLE III

#### MEMBERSHIP IN THE ASSOCIATION

Every Owner of a Unit and the Developer shall be a Member of the Association. Membership in the Association shall not be assignable, except to the successor-in-interest of the Owner's Unit and every membership of an Owner in the Association shall be appurtenant to and inseparable from ownership of its Unit, as the case may be.

### ARTICLE IV

#### VOTING RIGHTS

There shall be such classes of Members in the Association as are from time to time established by the Articles or Bylaws. The voting rights of such Members shall be such, and votes shall be cast, as set forth in said documents.

Notwithstanding anything to the contrary in any of the aforesaid documents, Developer shall have the right to appoint a majority of the respective Board of Directors of the Association until the first to occur of the following events: (i) the occurrence of such events as requires turnover of control to take place under Florida Statutes Chapter 720 (2002); or (ii) at any time that Developer voluntarily permits, or takes action which will permit, Members other than itself to elect a majority. The occurrence of the foregoing is hereafter called "Turnover."

## ARTICLE V

### DUTIES AND POWERS OF ASSOCIATION

Section 1. Board Authority. The Association acting through its Board of Directors, shall have such powers and duties with respect to the Common Property as are provided for in its Articles, Bylaws and in this Declaration.

Section 2. Indemnification of Officers, Directors and Others. The Association shall indemnify every officer, Director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding including settlement of any suit or proceeding, if approved by the then Board of Directors to which he or she may be a party by reason of being or having been an officer, Director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this section and Florida law.

The officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association, except to the extent that such officers or Directors may also be Members of the Association. The Association shall indemnify and forever hold each such officer, Director, and committee member harmless from any and all liability to others on account of any such contract commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, Director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and Directors' liability insurance to fund this obligation, if such insurance is reasonably available.

## ARTICLE VI

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Developer, for all Units now or hereafter owned by it within Avila at Palencia and subjected to this Declaration, hereby covenants, and each successor Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (i) annual Common Assessments for Common Expenses and (ii) Special Assessments, such Assessments to be established and collected as hereinafter provided. Such Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge and secured by a continuing lien upon the Unit against which such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessments fell due. Subject to provisions of this Declaration protecting First Mortgagees, the personal obligation for delinquent Assessments shall pass to and be assumed by the successors-in-title of such Owner.



Section 2. Purpose of Assessments. The Common Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and the Common Property and, in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Property and the Units situated upon the Property, including, but not limited to, the payment of insurance and taxes on the Common Property, if any are assessed, and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. Special Assessments shall be used for the stated purpose for which they are levied.

Section 3. Date of Commencement of Common Assessments; Due Dates; Assessment Period. The Common Assessment shall accrue in respect to any Unit, subject to this Declaration, on the date of conveyance of such Unit by the Developer to the first Owner thereof (the "Commencement Date") and shall thereafter be due on the first day of every "Assessment Period" as such term is defined in the Bylaws of the Association.

Section 4. Basis and Maximum Amount of Common Assessments. From the date of recordation of this Declaration in the public records until the earlier of (i) the date that Developer ceases to be in control of the Board, or (ii) the end of the fourth (4<sup>th</sup>) full fiscal quarter after the date of such recordation, the initial Common Assessments for all Class "A" Members of the Association, as defined in the Articles and Bylaws, shall be established by the Developer. Except as hereinafter provided, no Assessment shall be payable by Developer. During the foregoing period the Developer shall not pay any Common Assessments or Special Assessments, but the Developer shall, each year of operation based on the Association's budget, pay the difference between the sum of Assessments collected from Class "A" Members and the amount actually required to operate the Association based on its adopted budget. The Developer hereby guarantees to Owners of each Unit that quarterly Common Assessments due from the Unit will not exceed the sum of \$593.45, inclusive of reserves. Notwithstanding the foregoing, the Developer may at any time commence paying Assessments as to any Units that it owns and thereby automatically terminate its obligation to fund deficits and its guarantee.

The Board, in accordance with the requirements for a change of Common Assessments, as provided in this Article VI, may change the budget and level of Common Assessments at any annual meeting of the Board. For each twelve (12) month period (the "Assessment Year"), the Common Assessments may be adjusted by vote of the Board as set forth in Section 9 of this Article.

Section 5. Special Assessments. Other than as provided in Section 9, in addition to the Common Assessments authorized by Section 1 hereof, the Board may levy in any Assessment Year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Property, including the necessary fixtures and personal property related thereto, or for other purposes deemed appropriate by the Association. Any such assessment which in one (1) Assessment Year exceeds \$25,000.00 shall be subject to the approval of a majority of the Owners other than Developer. The due date of any Special

Assessment under this Article shall be fixed in a resolution authorizing such assessment. The Developer shall not be obligated to pay a Special Assessment levied on any Unit owned by it.

Section 6. Damage to Common Property by Owners. Any of the foregoing maintenance, repairs or replacements within the Common Property which arises out of or is caused by the willful or negligent act of the Owner, the Owner's family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefor shall be made against his or her Unit.

Section 7. Notice and Quorum for any Action Authorized Under Section 5. Written notice of any meeting of the Members called for the purpose of taking any action provided under Section 5, above, shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Class A Members and the Class B Members in person or by proxy entitled to cast fifty percent (50%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceeding meeting.

Section 8. Rate of Assessment. Assessments provided for in this Declaration shall be allocated and assessed among the Units within Avila at Palencia on an equal basis so that each Unit contributes the same share toward Assessments as do all others. The Assessments shall be apportioned among all Class A Owners of Units based on the total number of such Units, which are from time to time subject to these restrictions. Initially, assessments will be calculated based upon an assumed total of two hundred ninety eight (298) Units within the Property.

Section 9. Date of Commencement of Common Assessments, Due Date. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board of Directors shall fix the amount of the annual Common Assessment against all Units subject to assessment at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the Assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of the Assessments against any Unit shall be binding upon the Association as of the date of its issuance.

The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, and shall cause a copy of each such statement to be distributed to each Member, and to each First Mortgagee who has filed a written request for copies of the same with the Board of Directors, in the manner provided in the Bylaws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the membership of the Association a written, itemized budget of the expenses to be incurred by the

Association during such year in performing its functions under this Declaration, which may include reasonable provision for contingencies and deposits into the Common Property reserve fund.

The Association may designate any Sub-Association within Avila at Palencia to collect from the Owners that are subject to its jurisdiction, the assessments levied hereunder in respect to the Unit therein, and in doing so may bill the entire amount due from all Units therein to its Sub-Association.

At the end of any fiscal year of the Association, the Board may determine that all excess funds remaining in the Association's operating account, over and above the amounts used for the operation of the Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Articles or Bylaws to the contrary, if prior to dissolution of the Association that Association has not obtained tax exempt status from both the federal and state government, then upon such dissolution of the Association, any amount remaining in any reserve fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

Section 10. Exempt Property. Common Expenses shall only be assessed against Units which are subject to assessment under the provisions hereof, and all other portions of Avila at Palencia shall be exempt therefrom.

Section 11. Ownership. Assessments collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his or her Unit. No Owner has the right to withdraw or receive distribution of his or her share of any surplus, except as otherwise provided herein or by law.

Section 12. No Waiver or Excuse from Payment. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Property, by abandonment of the Unit for which the Assessments are made, or by interruption in the availability of the Common Property for any reason whatsoever. No Owner may be excused from payment of his or her share of the Common Expenses unless all Owners are likewise proportionately excused from payment, except as provided in Sections 4 and 5 of this Article, as to the Developer, and in Article XIV, as to First Mortgagees. Nothing herein shall be construed to prevent the Association from compromising or settling a claim for past due Assessments for less than full payment, if the Board determines that such action is in the best interests of the Association.

## ARTICLE VII

### EFFECT OF NON-PAYMENT OF ASSESSMENTS REMEDIES OF THE ASSOCIATION

Section 1. Effect of Non-Payment of Assessments; Remedies of the Association. Any

installment of a Common Assessment or Special Assessment not paid within ten (10) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Unit owned by the Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his or her Unit. If any installment of any assessment is not paid within thirty (30) days after its due date, the Board may mail an acceleration notice to the Owner and to each First Mortgagee of such Unit which has requested a copy of the notice. The notice shall specify (i) the fact that the installment is delinquent, (ii) the action required to cure the default, (iii) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the particular assessment for the then current fiscal year and sale of the Unit pursuant to foreclosure of the lien securing the unpaid assessment. The notice shall further inform the Owner of his or her right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 2. Notice of Claim of Lien. No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner, and a copy thereof has been recorded by the Association in the office of the Clerk of the Circuit Court of St. Johns County, Florida; said notice of claim of lien must recite a good and sufficient legal description of any such Unit, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18%) per annum, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such notice of claim of lien shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

Section 3. Foreclosure Sale. The assessment lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Association, through duly authorized agents, shall have the power to bid on any Unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers thereof shall record an appropriate release of lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed Fifty and No/100 Dollars (\$50.00) to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board or by the President of the Association stating the indebtedness secured by the liens upon any Unit created hereunder shall be conclusive upon the Association and the Owners' as to the amount of

such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee.

Section 5. Cumulative Remedies. The assessment liens and the right to foreclose and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6. Subordination of the Lien to Mortgages. The lien securing the Assessments provided for herein shall be subordinate to the lien of any First Mortgage (meaning any recorded mortgage with first priority or seniority over all other mortgages) made in good faith and for value and recorded prior to the date on which a notice of claim, pursuant to such lien, is recorded. The sale or transfer of any Unit shall not affect the Assessment lien. However, the sale or transfer of any Unit pursuant to the foreclosure or deed in lieu thereof of a First Mortgage, shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Unit for any installments of Assessments thereafter becoming due or from the lien thereof. Liens securing all Assessments under this Declaration and liens for assessments of Sub-Associations' operating community developed by Developer within Avila at Palencia shall be of equal dignity.

## ARTICLE VIII

### MAINTENANCE AND REPAIR OBLIGATIONS

Section 1. Maintenance of Units, Phases and Sub-Association Common Property. Each Owner shall maintain his or her Unit and all improvements comprising the Unit in a manner consistent with this Declaration, and all applicable covenants unless such maintenance responsibility is otherwise assumed by, or assigned to, the Association or a Sub-Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

A Sub-Association shall maintain its own common property and any other property for which it has maintenance responsibility in a manner consistent with its governing documents, this Declaration and all applicable covenants.

Section 2. Maintenance of Sub-Association Common Property. The Association may, but shall not be obligated to, assume maintenance responsibility for property within any Sub-Association, in addition to that designated by the Declaration or by any Supplemental Declaration, either by agreement with the Sub-Association or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with this Declaration. All costs of maintenance pursuant to this paragraph shall be assessed as a Special Assessment only against the Unit within the Sub-Association to which the services are provided. The provision of services in accordance with this section shall not constitute discrimination or against a class.

Section 3. Responsibility for Repair and Replacement. Unless otherwise specifically provided in this Declaration or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary, to maintain the property to a level consistent with this Declaration.

By virtue of taking title to any Unit, each Owner covenants and agrees with all other Owners, and with the Association, to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Sub-Association in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do, hereunder).

Each Owner further covenants and agrees that in the event of damage to, or destruction of, structures on, or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs that are not covered by insurance proceeds.

The requirements of this section shall apply to any Sub-Association responsible for its own common property in the same manner as if the Sub-Association were an Owner and the its own common property were a Unit. Additional recorded covenants applicable to any Sub-Association may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Unit with such Sub-Association and for clearing and maintaining the Unit in the event the structures are not rebuilt or reconstructed.

Section 4. Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in this Article, it shall be the duty of the Owners and Sub-Associations in Avila at Palencia at their sole cost and expense, subject to the provisions of this Declaration, to maintain, repair, replace and restore areas subject to their exclusive control, in a neat, sanitary and attractive condition consistent with the quality of the original construction and standards adopted by the Board, from time to time. In the event that any such Owners shall permit any improvement or land, which it is their responsibility to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration or any standards adopted by the Board, then the Association shall have the right, but not the duty, upon fifteen (15) days prior written notice to the appropriate Sub-Association or to such Owners to correct such conditions and to enter upon such property to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the Sub-Association or Owners. Said cost shall be a Special Assessment and shall create a lien upon all the Units in said Sub-Association, or particular affected portions therein, enforceable in the same manner as other assessments as set forth in this Declaration. Such Sub-Association or such Owners shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board of Directors, to the amounts payable by all Units in the affected Sub-Association as Special Assessments.

Section 5. Maintenance Obligations of Association. Subject to the provisions of Section 4 of this Article, the Association shall maintain, or provide for the maintenance of all of the Common Property and all improvements thereon, in good order and repair, including recreational

facilities, the interior and exterior of any Buildings thereon, and any and all utility facilities, Lakes, improvements, and Buildings on the Common Property. In addition to improvement maintenance, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Property or located on any Sub-Association common property. The Association shall further maintain, reconstruct, replace and refinish any Roads and any paved surface in the Common Property or Sub-Association common property. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in their judgment to be appropriate.

Section 6. Exterior Appearance and Design. The Owners in any Building which has suffered damage may apply for approval for reconstruction, rebuilding or repair of the improvements therein to the Board of the Association. Application for such approval shall be made in writing together with drawings and elevations showing the proposed reconstruction and the end result thereof. The Board shall grant such approval only if upon completion of the work the exterior appearance and design will be substantially the same as that which existed prior to the date of the casualty. Failure of the Board to act within thirty (30) days after receipt of such request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof.

Section 7. Time Limitation. The Owners of Units located in any damaged Building, and the Board of the Association shall be obligated to proceed with all due diligence hereunder, and, assuming the availability of funds, the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

Section 8. Reconstruction. If all or a portion of any Building or other improvements located on the Property are damaged or destroyed by casualty, they shall be repaired and restored unless in accordance with the conditions of this Declaration it is provided, or a decision is made, not to repair or reconstruct them.

In the event the improvements are to be reconstructed, it shall be done and carried out in accord with the original plans and specification for the improvements, and in accord with the general style, architecture and colors utilized and existing with the remainder of Avila at Palencia at the time as determined by the Board. Construction and reconstruction shall occur as soon as it is commercially reasonable to do so following the casualty and, in any event, debris resulting from the casualty will be promptly removed at the expense of the Owner(s) of the damaged improvements. In the event that the Owner(s) of such damaged improvements fail to remove such debris and rubble and/or, having commenced reconstruction, fail to complete it, then the Association, based on the decision of the Board, shall have the power and authority to enter on to the Unit or common property that has sustained such damage to remove such debris and rubble, and/or to complete said construction, and shall have the right, and is hereby granted, to have access to all available insurance proceeds and assessments levied by such owners to pay for the costs thereof to complete such work. The Association may, in such cases, levy a Special Assessment against the Owner(s) of such affected Units to pay for all reasonable costs of such

removal and work. The Association must give written notice to the Owner(s) against whom it is to be exercised within thirty (30) days after the date that it desires to exercise the right.

Section 9. Right To Purchase. In the event of a casualty, whereby the improvements are not to be reconstructed, then in that event the Association has the right to purchase the interest in the Property of the Owner(s) that do not desire to reconstruct the improvements. The purchase price will be the fair market value of the affected Unit as a whole. To exercise this right the Association must give written notice to the Owner(s) against whom it is to be exercised within thirty (30) days after the date that the Association has determined to exercise the right. The Owner(s) and the Association will then have a period of sixty (60) days thereafter in which to attempt to reach agreement, through the assistance of such professionals as each may wish to engage on the fair market value for the affected Unit. If they are unable to do so within that period of time, then each party will appoint an MAI qualified appraiser who has experience in appraising residential properties in Florida, and ideally in St. Johns County, Florida to act for it. Each party will provide the appraisal to the Owner party within sixty (60) days following the date it is determined that it is necessary to do so. If the two (2) appraisals vary by not more than ten percent (10%) of the higher of the two (2), then they shall be averaged and the fair market value will be deemed to be the average. If they vary by more than such ten percent (10%) then the two (2) appraisers will be asked to select and agree upon a third appraiser who shall make an appraisal of the affected Unit. The three (3) appraisals will then be averaged and the average deemed to be the fair market value. Closing on the purchase must take place not later than thirty (30) days after the date the fair market value is arrived at, with the purchase price being paid in cash upon conveyance. All mortgages and other liens and encumbrances on the interest of the Owner(s) conveying their interests, will be paid and discharged at the time of conveyance and closing from the cash proceeds of sale. Customary terms and conditions will govern cost allocations prorrations.

## ARTICLE IX

### USE RESTRICTIONS

The Property, and additional lands which may become subject to this Declaration by Supplemental Declaration, shall be held, used and enjoyed subject to the following limitations and restrictions, and further subject to the exemption of Developer in Section 16 hereof.

Section 1. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property without the prior written consent of the Board, except signs, regardless of size, used by Developer, its successors or assigns, for advertising during the construction and sale period and identification signage.

Section 2. Roads. All Roads and paved surfaces shall be maintained in the style originally established by the Developer.

Section 3. Common Property and Restricted Common Property. The Common Property and Restricted Common Property shall be used only for the purposes for which they are intended to be used in the furnishing of services and facilities for the enjoyment of the Owners.



Section 4. Trash Containers. All trash and trash containers and contents thereof shall be stored out of plain view of a passerby.

Section 5. Exterior Antennae. No exterior radio, television or other electronic device antennae shall be permitted on the exterior of any Unit without the prior written approval of the Association.

Section 6. Parking. Automobile parking spaces may be used only for parking vehicles that are in operating condition and for no other purposes. The Board may establish rules and regulations limiting vehicles, types, sizes and numbers and restricting the use, parking and location of commercial vehicles, trucks and, if decided by the Board, prohibiting recreation vehicles and trailers. Parking spaces that are designated as Restricted Common Property, shall each be assigned to a separate Owner or Sub-Association by the Board.

Section 7. Additional Temporary or Permanent Structures. No structure of a temporary or permanent character, including, but not limited to, basements, tents, shacks, garages, barns, or other out buildings shall be used or erected on any of the Common Property without the prior approval of the Association and the Property Owners Association.

Section 8. Pets. No animals of any kind shall be kept under any circumstances in a Unit or allowed upon the Property, except by prior written consent of and upon such terms and conditions as shall be imposed by the Developer or the Board of Directors of the Association.

If consent is given, whether by the Developer or by the Board of Directors of the Association, the consent may be withdrawn at any time by the Board of Directors at a duly called meeting of the Board if the Board determines, in its sole discretion, that the pet has become a nuisance to the Common Property or to the Owners or that any rules and regulations regarding pets are not being fully obeyed. If consent is withdrawn by the Board, the Owner shall immediately remove the pet from the Property. Consent shall automatically terminate upon death or other disposition of a pet for which consent was granted.

All Owners shall identify and register their pet with the Association. Pets shall never be allowed to run freely upon any of the Common Property. Any Owner maintaining a pet on Common Property shall be fully responsible for, and shall bear the expense of, any damage to persons or property resulting therefrom. Any such damage shall be determined by the Board of Directors of the Association and collected by the Association.

Section 9. Alteration and Improvement of Unit. The prior, express written consent of the Association and the Property Owners Association is required in order to enclose, paint or otherwise decorate or substantially change the appearance of any Unit or any portions of the exterior of any of the Buildings that may be constructed on the Properties.

Section 10. Developer. Until the Developer has sold and conveyed title to all of the Units within the Porpety which it plans to develop, the Developer may use any Unit it owns and

the Common Property to facilitate such sales, including, but not limited to, the maintenance of a sales office and model apartments and the display of signs.

Section 11. Lakes. No motorboats shall be permitted to use any Lake which may now or hereafter be located on the Common Property. No structures may be erected on any Lake except with written permission from the Association and the Property Owners Association.

Section 12. Additional Rules and Regulations. The Developer, until it conveys the Common Property, and thereafter the Board of Directors of the Association, may establish such additional rules and regulations as may be deemed for the best interests of the Association and its Members for purposes of enforcing the provisions of this Article IX.

Section 13. Exterior Improvements; Landscaping. No Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors or windows of any Buildings (including, but not limited to, awnings, antennae, signs, storm shutters, screens, furniture, fixtures and equipment), or to structures of any parking areas without the prior written consent of the Association and the Property Owners Association. Notwithstanding the foregoing, an Owner of a Unit located in a residential condominium submitted on the Property shall be permitted to display one (1) portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, to display in a respectful way one (1) portable, removable official flag, pursuant to the Condominium Act.

Section 14. Nuisances. No nuisances shall be allowed upon the Property, nor any use or practice which is the source of annoyance to residents or which interferes with the proper use of the Common Property. All parts of the Property shall be kept in clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist. No use shall be made of any Unit or of the Property which would increase the rate of insurance upon the Property.

Section 15. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Property shall be the same as is elsewhere herein specified with respect to other maintenance, repair and replacement.

Section 16. Developer Exemption. Developer or its successors or assigns will undertake the work of constructing Units and improvements. The completion of that work and the sale, rental and other disposal of Units is essential to the establishment and proper economic function of Avila at Palencia. As used in this section and its sub-paragraphs, the words "its successors or assigns" specifically do not include purchasers of completed Units. In order that said work may be completed and Avila at Palencia established as a fully occupied community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Developer, its successors or assigns, or its or their contractors or subcontractors, from doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including, but not limited to, the alteration of such construction plans and designs as Developer deems advisable in the course of development (all models or sketches showing plans for future development of Avila at Palencia may be modified by the Developer at any time and from time to time, without notice).

(b) Prevent Developer, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any property, owned or controlled by Developer, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business or of completing said work and establishing Avila at Palencia as a residential community and disposing of the same by sale, lease or otherwise.

(c) Prevent Developer, its successors or assigns, or its or their contractors or subcontractors, from conducting on any property, owned or controlled by Developer, or its successors or assigns, its or their business of developing, grading and constructing improvements in Avila at Palencia as a residential community and of disposing of Units therein by sale, lease or otherwise.

(d) Prevent Developer, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be constructed as part of the Common Property.

(e) Prevent Developer, its successors or assigns or its or their contractors or subcontractors, from maintaining such sign or signs on any property owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Units.

Section 17. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted on Avila at Palencia, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted on or around the residential buildings or Common Property.

## ARTICLE X

### COMPLIANCE AND ENFORCEMENT

Every Owner and occupant of a Unit shall comply with this Declaration and its exhibits and rules and regulations adopted by the Board, from time to time. The Board may impose sanctions for violations of such documents in accordance with the procedures set forth in the Bylaws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest or invitee of a Unit violates the applicable

documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(b) suspending any person's right to use any portion of the Common Property; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from any Unit;

(c) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;

(d) exercising self-help or taking action to abate any violation of the applicable documents in a non-emergency situation;

(e) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of this Declaration and to restore the Unit to its previous condition. Upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the structure or improvement that is in violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. The cost of such removal and restoration may be assessed against the Unit, and the Owner, as a Special Assessment;

(f) precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the applicable documents from continuing or performing any further activities in the properties, without incurring liability to any person therefor;

(g) levying specific assessments to cover costs incurred by the Association to bring a Unit into compliance with the applicable documents;

(h) taking the following enforcement sanctions to ensure compliance with the applicable documents without the necessity of compliance with the procedures set forth in the Bylaws;

(i) exercising self-help in any emergency situation, including, but not limited to, removing dangerous pets and towing of vehicles that are in violation of applicable rules and regulations with regard to parking; and

(j) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may record a notice of violation in the public records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Special Assessment. If a Sub-Association fails

to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Special Assessment against all Units within such neighborhood. Except in an emergency situation, the Association shall provide the Owners of any Sub-Association reasonable notice and an opportunity to cure the problem prior to entering a dwelling.

All remedies set forth in the applicable documents shall be cumulative of any remedies available at law or in equity. The Association shall also have the authority, but not the obligation, to enforce any provision contained in the governing documents of any Sub-Association. The Sub-Association shall have the primary responsibility to enforce its governing documents, and the Association's rights hereunder shall be exercised only after the Sub-Association has failed or refused to fulfill its obligations. In any action to enforce the governing documents of a Sub-Association, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case, (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) that although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or (iv) that is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

## **ARTICLE XI**

### **DESTRUCTION OR DAMAGE TO COMMON PROPERTY**

Damage to or destruction of all or any portion of the Common Property shall be handled in the following manner, notwithstanding any provision in this Declaration to be contrary:

(a) If in the event of damage or destruction to the Common Property or any portion thereof, the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Property to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are within Ten Thousand and No/100 Dollars (\$10,000.00) or less of being sufficient to effect total restoration to the Common Property, then the Association shall cause the Common Property to be repaired and reconstructed substantially as they previously existed and the difference between the insurance proceeds and the actual cost

shall be levied as a Special Assessment equally against each of the Owners, in accordance with the provisions of this Declaration.

(c) If the insurance proceeds are insufficient by more than Seventy-Five Thousand and No/100 Dollars (\$75,000.00) to effect total restoration to the Common Property, then by written consent or vote of a majority of the Class A Members of the Association and the Class B Members, they shall determine whether (i) to rebuild and restore in substantially the same manner as the improvements existed prior to damage and to raise the necessary funds over the insurance proceeds by levying equal Special Assessments against all Units, or (ii) subject to the provisions of this Declaration and the Property Owners Declaration, to not rebuild and to distribute the available insurance proceeds equally to the Owners and Mortgagees of the Units as their interests may appear.

(d) Each Owner shall be liable to the Association for any damage to the Common Property not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his or her family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to levy a Special Assessment against any such Owner, equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Unit, the liability of such owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Unit and may be collected as provided herein for the collection of Common Assessments.

## ARTICLE XII

### SUPPLEMENTAL ASSOCIATION POWERS

Section 1. Powers of the Association Relating to Phases and Sub-Associations. The Association shall have the power, but not the obligation, to veto any action taken or contemplated to be taken by any Sub-Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with this Declaration. The Association also shall have the power to require specific action to be taken by any Sub-Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditure be made therefore.

A Sub-Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Sub-Association fails to comply, the Association shall have the right to effect such action on behalf of the Sub-Association and levy a Special Assessment to cover the costs, as well as an administrative charge and sanctions.

Section 2. Provision of Services. The Association shall be authorized, but not obligated, to enter into, in the Board's discretion, contracts or agreements with other entities, including

Developer, to provide services to and facilities for the Members of the Association and their guests, lessees, and invitees and to charge use and service fees for such services and facilities. By way of example, some services and facilities which might be offered include pest control service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. The cost of such services and facilities may be included as a common expense if offered in bulk to all Members.

Section 3. Relations with Other Entities. The Association may enter into agreements with tax exempt organizations and other entities for the benefit of the Common Property and Owners, as well as the larger community surrounding the Property. The purpose of and funding for such agreements may include, but are not limited to:

(a) programs and activities which serve to promote a sense of community, such as recreational leagues, cultural programs, education programs, festivals, holiday celebrations and activities, a community network and recycling programs; and

(b) social services and community outreach programs and other charitable causes.

Funding for such activities shall be provided for by Common Assessments and included as a part of the annual adopted budget of the Association.

## ARTICLE XIII

### INSURANCE

Section 1. Units. By virtue of taking title, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Sub-Association in which the Unit is located carries such insurance.

Section 2. Common Property. The Association shall keep all buildings, improvements, and fixtures of the Common Property insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Property shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

Section 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Property facilities, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of this Declaration and the Property Owners Declaration. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may, subject to the provision of this Declaration, make a Special Assessment against all Units to cover the additional

cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Units, in accordance with the provisions of this Declaration.

Section 4. Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, any management company, Developer, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 5. Liability and Other Insurance. The Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments, liquor liability insurances and malicious mischief, in such limits as it shall deem desirable (public liability coverage shall be in an amount not less than \$1,000,000.00 for bodily injury, including death of persons and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association may also obtain workmen's compensation insurance, and other liability insurance as it may deem desirable, insuring all Owners and the Association, Board of Directors and any management company, from liability in connection with the Common Property, the premiums for which are Common Expenses included in the Common Assessments made against the Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and any management company thereof against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof.

Section 6. Waiver By Insurer. Whenever obtainable, insurance policies maintained by the Association shall provide for the following: (a) that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee as that term is herein defined; (b) waive the insurer's right of subrogation against the Association and against the Members individually and as a group; (c) the insurance is not prejudiced and the insurer may not avoid liability for a loss that is caused by an act of the Board of Directors of the Association or by a Member of the Board of Directors of the Association or by one (1) or more Members, or by any act or neglect of individual Members which is not in the control of such Members collectively; and (d) the policy is primary in the event that Members have other insurance covering the same loss.

Section 7. Sub-Association Insurance. Each Sub-Association shall maintain and pay for such insurance as is required by its own applicable documents. If any Sub-Association fails to do so then the Association may purchase insurance for it and assess the cost to the particular Sub-Association and the Units of the members who are members of the particular Sub-Association.



## ARTICLE XIV

### MORTGAGEE PROTECTION CLAUSE

The following provisions are for the benefit of First Mortgagees and to the extent these provisions conflict with any other provisions of the Declaration, these provisions shall control:

(a) Each holder of a First Mortgage encumbering any Unit, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Any holder of a First Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage or by deed in lieu of foreclosure, shall take title to such Unit free and clear of any claims of unpaid assessments or charges due to the Association against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee except to the extent a Notice of Claim therefor was filed prior to recording of said mortgage.

(c) Unless at least seventy-five percent (75%) of First Mortgagees (based upon one (1) vote for each Mortgage owned), and sixty percent (60%) of the Class A Members (other than Developer) have given their prior written approval, neither the Association nor the Owners shall:

(1) By act or omission seek to sell or transfer the Common Property and the improvements thereon which are owned by the Association.

(The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association or the Developer or the transfer of the Common Property to an unincorporated association of the Owners in accordance with the Articles of the Association shall not be deemed a transfer within the meaning of this clause.)

(2) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Unit.

(3) By act or omission, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the exterior appearance of residential buildings.

(4) Fail to maintain fire and extended coverage on insurable Common Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost) less such reasonable deductions as the Board may deem appropriate.

(5) Use hazard insurance proceeds for losses to the Common Property for other than the repair, replacement or reconstruction of such improvements.

(6) Except as otherwise provided herein by reservation to Developer herein, amend this Declaration or the Articles or Bylaws of the Association in such a manner that the rights of any First Mortgagee will be adversely affected or the value of Units reduced.

(d) First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(e) All First Mortgagees who have registered their names with the Association shall be given (i) thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws of the Association and prior to the effective date of any termination of any agreement for professional management of the Common Property following a decision of the Owners to assume self-management of the Common Property; and (ii) immediate notice following any damage to the Common Property whenever the cost of reconstruction exceeds Fifty Thousand and No/100 Dollars (\$50,000.00), and as soon as the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Common Property.

(f) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property facilities and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

## ARTICLE XV

### ENCROACHMENTS – EASEMENTS

Section 1. Encroachments. If (a) any portion of the Common Property encroaches upon any other portion of Avila at Palencia; (b) any other portion of Avila at Palencia encroaches upon the Common Property; or (c) any encroachment shall hereafter occur as the result of (i) construction of any Building or other improvements; (ii) settling or shifting of a Building or other improvements; (iii) any alteration or repair to the Common Property or any other portion of Avila at Palencia; or (iv) any repair or restoration of any Building, or other improvements or any of the Common Property after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Building, improvements or Common Property, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the structure causing said encroachment shall stand.

Section 2. Pipes, Wires, Ducts, Cables, Conduits, Public Utility Lines, etc. Each portion of Avila at Palencia shall have an easement in common with all other portions thereof to use, maintain, repair, alter and replace all pipes, wires, ducts, vents, cables, conduits, public utility lines, and similar or related facilities located in Avila at Palencia and serving such portion thereof. Each portion of Avila at Palencia shall be subject to an easement in favor of all other portions thereof to use, maintain, repair, alter and replace the pipes, wires, ducts, vents, cables,

conduits, public utility lines and other similar or related facilities located in such portion of Avila at Palencia and serving other portions thereof.

Section 3. Easements of Support. Whenever any structure included in the Common Property adjoins any structure included in any other portion of Avila at Palencia, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure.

Section 4. Construction and Sales. The Developer (and its agents, employees, contractors, subcontractors and suppliers) shall have an easement of ingress and egress over and across the Common Property for construction purposes. The Developer (and its agents, employees and designees) shall have an easement to erect, maintain, repair and replace, from time to time, one (1) or more signs on the Common Property for the purposes of advertising the sale or lease of Units.

## ARTICLE XVI

### GENERAL PROVISIONS

Section 1. Enforcement. This Declaration, the Articles and the Bylaws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in the Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by any Owner, the Developer, or the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(c) The failure of the Association to enforce any of the covenants contained in this Declaration relative to either or in their respective Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(d) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws, shall not affect or impair the lien or charge of any Mortgage made in good faith and for value on any Unit; provided, however, that any subsequent Owner of such Unit shall be bound by said covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

Section 2. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants and restrictions of this Declaration shall run with title and bind the Property hereby encumbered, and shall inure to the benefit of and be enforceable by the Association, the Developer and the Owners subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions, reservation of easements, equitable servitudes and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, approved by the then Owners of two-thirds (2/3<sup>rds</sup>) of the Class A Members, has been recorded, agreeing to change said covenants and restrictions in whole or in part.

Section 4. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development or operation of Units and the governance of a residential community and for the maintenance of the Common Property. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 5. Amendments. This Declaration may be amended by (i) the affirmative vote or written consent of the Owners holding not less than fifty-one percent (51%) of the voting power of the Class "A" Membership of the Association together with the affirmative vote of the Class "B" Member (so long as the Class "B" Membership exists); or (ii) solely by the unilateral affirmative action of the Class "B" Member; provided, however, that no amendment adopted solely by the Class "B" Member shall be permitted which has a material adverse affect upon substantial rights of an Owner or First Mortgagee or the value of any part of the Property subject hereto. Nothing contained herein shall affect the right of the Developer to make such amendments or Supplemental Declarations as may otherwise be permitted herein.

Section 6. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Property to the public, or for any public use.

Section 7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of Avila at Palencia does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the

residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 9. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Developer or its agents or employees in connection with any portion of the Common Property, their physical condition, zoning, compliance with applicable laws, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration and except as may be contained in documents executed by Developer from time to time.

The Developer may subject any portion of the Property to additional covenants and easements, including covenants obligating the Association to provide services and authorizing the Association to recover its costs through neighborhood assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such Property to this Declaration or in a separate Supplemental Declaration referencing property previously subject to this Declaration. If the Property is owned by someone other than Developer, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the supplemental declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject Property in order to reflect the different character and intended use of such Property.

The Developer may without fee or charge maintain and carry on upon portions of the Common Property such facilities and activities as, in the sole opinion of the Developer, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units and sales offices. Such activities may include, without limitation, holding special events and promotional activities on portions of the Common Property. The Developer shall have easements for access to and use of the Common Property for such purposes.

Section 10. Supplemental Declarations. From time to time Developer may execute and file Supplemental Declarations hereto for the purpose of subjecting additional portions of the Properties to the effect of this Declaration and for the purpose of designating and identifying additional land as Common Property.

Section 11. Withdrawal and Modification. Anything herein to the contrary notwithstanding, the Developer reserves the absolute right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Properties from the provisions of this Declaration. Provided, however, the right shall not permit the removal of any land containing improvements, facilities and amenities which are needed by or were available for use by any Owners at the time of acquiring their Unit. Provided further that Developer may unilaterally modify and amend this Declaration for the

purpose of altering the boundaries and use of the Common Property so as to enlarge or reduce the size of and/or change the location of either.

Notwithstanding anything to the contrary herein, and/or in addition to the other reserved powers and rights herein, Developer reserves the right to limit the effect of this Declaration and of the scope of the Avila at Palencia project to a portion, but not all of the Property.

Developer has executed this Declaration on the date first above written.

Signed, Sealed and Delivered  
in the Presence of:

*Keith M. Kallen*  
Signature of Witness #1

KEITH M. KALLEN  
Printed Name of Witness #1

**CROSSWINDS AT PALENCIA, LLC, a Florida  
limited liability company**

*Scott A. Day*  
Signature of Witness #2

Scott A. Day  
Printed Name of Witness #2

By: *Bernard Gliberman*  
Bernard Gliberman, Managing Member

STATE OF MICHIGAN

§§  
COUNTY OF Wayne

15<sup>th</sup> I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this day of December 2004, by Bernard Gliberman, as Managing Member of Crosswinds at Palencia, LLC, a Florida limited liability company, who ☒ is personally known to me OR ☐ produced identification.

(Notary Seal)

*Anja J. Walthall*  
Notary Public

Printed Name of Notary Public  
My Commission Expires:

**Anja J. Walthall  
Notary Public, Wayne County, MI  
My Commission Expires April 7, 2005  
Acting in Oakland County**

**JOINDER AND CONSENT**

The undersigned, being the owner and holder of a mortgage recorded in Official Records Book 2198, Page 0267, of the Public Records of St. Johns County, Florida, which encumbers the land described on Exhibit 1 in the Master Declaration of Covenants, Conditions, Restrictions and Easements for Avila at Palencia, to which this instrument is attached, hereby joins in and consents to the declarations, covenants, restrictions, easements and other terms thereof and agrees that in the event of foreclosure of its mortgage against, or its acquisition of title to the land described on Exhibit 1 as a result of a deed in lieu of foreclosure it, and/or its successors and assigns, will observe and not disturb the rights of any owners and members who comply with the provisions of the Declaration with respect to any of the easements and shared or cross use rights declared herein with respect to the lands subject to the attached Declaration.

Executed this 13<sup>th</sup> day of December 2004.

Witnesses:

**OHIO SAVINGS BANK, a Federal Savings Bank**

Jennifer Preston  
Witness #1  
Printed Name of Witness #1

Debra L. Wood  
Witness #2  
Printed Name of Witness #2

By:

CRAIG RIDINGER  
Printed Name: CRAIG RIDINGER  
Title: VICE PRESIDENT  
**CRAIG RIDINGER**  
**VICE PRESIDENT**

STATE OF FLORIDA  
§§:  
COUNTY OF SEMINOLE

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 13<sup>th</sup> day of December 2004, by CRAIG RIDINGER, as VICE PRESIDENT, of Ohio Savings Bank, a Federal Savings Bank, who is personally known to me or who produced as identification.

(Notary Seal)



DEBRA L. WOOD  
MY COMMISSION # DD 113546  
EXPIRES May 13, 2006  
Handled Thru Budget Notary Services

Debra L. Wood  
Notary Public

Debra L. Wood  
Printed Name of Notary Public  
My Commission Expires: 5/13/06

**SCHEDULE OF EXHIBITS AND ATTACHMENTS**

**EXHIBIT NO.**

**DESCRIPTION**

1

The Property

2

Avila at Palencia Master Association, Inc. Articles of Incorporation

3

Avila at Palencia Master Association, Inc. Bylaws

COPY

COPY

COPY



EXHIBIT "1"

THE PROPERTY

COPY

COPY

COPY

LEGAL DESCRIPTION:

A PORTION OF SECTION 4, TOWNSHIP 6 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF LANDS DESCRIBED AS TRACT "A", ACCORDING TO DEED RECORDED IN BOOK 1709, PAGE 178 OF THE OFFICIAL RECORDS OF SAID COUNTY; THENCE THE FOLLOWING (2) COURSES ALONG THE WESTERLY BOUNDARY OF SAID TRACT "A": COURSE (1) - NORTH 19°03'38" EAST, 219.45 FEET; COURSE (2) - NORTH 24°35'18" WEST, 137.83 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, THENCE SOUTH 58°19'53" WEST, 134.79 FEET; THENCE SOUTH 80°27'27" WEST, 31.07 FEET; THENCE NORTH 84°43'30" WEST, 132.19 FEET; THENCE NORTH 38°08'26" WEST, 171.54 FEET; THENCE IN A NORTHERLY DIRECTION, ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 100.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 00°32'54" WEST, 121.18 FEET; THENCE NORTH 37°50'32" WEST, 300.49 FEET; THENCE IN A NORTHWESTERLY DIRECTION, ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 282.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 23°10'26" WEST, 142.82 FEET; THENCE NORTH 08°30'21" WEST, 117.42 FEET; THENCE IN A NORTHWESTERLY DIRECTION, ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 130.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 23°30'21" WEST, 67.29 FEET; THENCE NORTH 38°30'21" WEST, 29.44 FEET; THENCE NORTH 51°29'18" EAST, 162.10 FEET; THENCE NORTH 24°29'45" WEST, 332.20 FEET; THENCE NORTH 37°50'32" WEST, 520.08 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF PALENCIA VILLAGE DRIVE, A VARIABLE WIDTH RIGHT-OF-WAY AS NOW ESTABLISHED, ACCORDING TO MAP THEREOF RECORDED IN MAP BOOK 41, PAGE 52 THROUGH 57 OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE IN A NORTHEASTERLY DIRECTION, ALONG THE ARC OF A CURVE IN SAID SOUTHERLY RIGHT-OF-WAY LINE, SAID CURVE BEING CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 670.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 53°10'29" EAST, 471.30 FEET; THENCE SOUTH 57°25'02" EAST, 194.52 FEET; THENCE SOUTH 82°39'17" EAST, 52.85 FEET TO THE AFOREMENTIONED WESTERLY BOUNDARY OF TRACT "A"; THENCE THE FOLLOWING (3) COURSES ALONG SAID WESTERLY BOUNDARY: COURSE (1) - SOUTH 47°53'37" EAST, 152.74 FEET; COURSE (2) - SOUTH 12°46'26" WEST, 127.50 FEET; COURSE (3) - SOUTH 30°38'33" EAST, 427.14 FEET TO THE EASTERLY BOUNDARY OF LANDS DESCRIBED AS PARCEL "39", ACCORDING TO DEED RECORDED IN BOOK 1958, PAGE 2168 OF THE OFFICIAL RECORDS OF SAID COUNTY; THENCE THE FOLLOWING (5) COURSES ALONG SAID EASTERLY BOUNDARY, THE SAME BEING SAID WESTERLY BOUNDARY OF TRACT "A": COURSE (1) - SOUTH 25°01'09" WEST, 148.58 FEET; COURSE (2) - SOUTH 49°05'43" EAST, 73.95 FEET; COURSE (3) - SOUTH 06°25'23" EAST, 250.43 FEET; COURSE (4) - SOUTH 31°28'58" WEST, 106.22 FEET; COURSE (5) - SOUTH 10°40'07" EAST, 117.36 FEET; THENCE, CONTINUING ALONG SAID WESTERLY BOUNDARY OF TRACT "A", THE FOLLOWING (4) COURSES: COURSE (1) - SOUTH 72°08'30" EAST, 78.97 FEET; COURSE (2) - SOUTH 09°27'14" WEST, 191.15 FEET; COURSE (3) - SOUTH 18°41'45" EAST, 249.63 FEET; COURSE (4) - SOUTH 24°35'18" EAST, 73.71 FEET TO THE POINT OF BEGINNING.

THE LAND THUS DESCRIBED CONTAINS 20.34 ACRES, MORE OR LESS.

COPY

This Instrument prepared by:  
Edward Ronsman, Esq.  
Jackson Law Group  
1301 Plantation Island Drive, Suite 304  
St. Augustine, FL 32080

**E-RECORDED** simplifile®  
ID: 2016081304  
County: St. Johns  
Date: 12/13/2016 Time: 10:37 AM

**AVILA AT PALENCIA MASTER ASSOCIATION, INC.**  
**DEDICATION OF COMMON PROPERTY**

**THIS DEDICATION** is made this 14<sup>th</sup> day of December, 2016 by the Board of Directors of Avila at Palencia Master Association, Inc., a Florida Corporation not-for-profit ("Association").

**WHEREAS**, the Avila at Palencia Master Association, Inc., a Florida not for profit corporation, under Chapter 718 F.S., was formed December 15, 2004;

**WHEREAS**, the Avila at Palencia Master Association is a residential community association governed under Chapter 718 of the Florida Statutes responsible to maintain and enforce the covenants, restrictions and easements as set forth in the Master Declaration of Restrictive Covenants, Condition, Reservations and Easements for Avila at Palencia ("Declaration") recorded at Official Record Book 2344, page 1971 of the public records of St. Johns County, Florida;

**WHEREAS**, the Master Association Property (as defined in the Declaration) subject to the Declaration is recorded at Official Records Book 2344, Page 2004 of the Public Records of St. Johns County, Florida, a copy of the legal description of the Master Association Property is attached hereto as **Exhibit A**;

**WHEREAS**, the Board of Directors of the Association has acquired title to certain residential property ("Common Area Parcel") located within the Master Association Property by Quit Claim Deed, a copy of which instrument is attached and incorporated herein as **Exhibit B**. The Common Area Parcel was previously platted as part of a Condominium, being that portion formerly described as "Building D" of La Terraza II Condominium, recorded at Official Records Book 2855, Page 1376 of the Public Records of St. Johns County. The Condominium form of ownership for the Common Area Parcel (former Building D) was terminated pursuant to that Termination Plan recorded at Official Records Book 3864, Page 1367 of the Public Records of St. Johns County, Florida. The Common Area Parcel was subsequently transferred from La Terraza II Condominium Association, Inc. (as the Termination Trustee) to Marshall Creek SPE Holdings, LLC by way of Quit Claim Deed on May 8, 2014, and recorded at Official Records Book 3877, Page 1177 of the Public Records of St. Johns County, Florida. Marshall Creek SPE Holdings, LLC subsequently transferred the Common Area Parcel by Quit Claim Deed to the Association on January 29, 2016, and recorded on November 18, 2016 at Official Records Book 4288, Page 560 of the Public Records of St. Johns County, Florida;

**WHEREAS**, Article IV, Section 3 of the Articles of Incorporation ("Articles") provides that the Board shall have the power and authority to "acquire (by gift, purchase or lease), to own, hold, improve, insure, build upon, operate, maintain, replace and to repair, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association, and

to contract improvements and to repair, remodel and demolish the same, on any property that is owned or leased by the Association”;

**WHEREAS**, Article I, Section 1, sub-section (h) of the Declaration defines “Common Property” as “those portions of the Property which are intended to be devoted to the common use and enjoyment of the Owners (as hereinafter defined) of Units (as hereinafter defined)”;


**WHEREAS**, The Association desires to establish such property as “Common Property” for all intents and purposes under the Declaration, Articles and By-Laws of the Association.


**NOW, IT IS RESOLVED** that the Board of Directors, hereby evidences the passage of this Resolution to provide notice to all members, tenants, guests, and invitees of the following:

1. The Board of Directors, pursuant to authority set forth in Article IV, Section 3 of the Articles of Incorporation, has accepted title to the Common Area Parcel pursuant to that Quit Claim Deed attached and incorporated as Exhibit B.
2. The Board of Directors hereby dedicates the property described in Exhibit B as Common Property for use of home owners within the Association Property. The use of the Common Area Parcel is as a landscaped area with walkways for enjoyment of home owners. The Board of Directors certifies that such property is subject to exclusive use by the home owner members of the Avila at Palencia Master Association, as such membership is defined in Article III of the Declaration.
3. The Common Area Parcel will not be utilized for future development, as it is solely being used as Common Property for the enjoyment of the home owners by way of it being landscaped as a recreational area with walkways.

**IN WITNESS WHEREOF**, the duly authorized officers of the undersigned Association have executed and attest to this Dedication this 7<sup>th</sup> day of December, 2016.

AVILA AT PALENCIA MASTER ASSOCIATION, INC.

By:   
Elroy P. SUSKALO President

By:   
Rose Marie Johns, Secretary

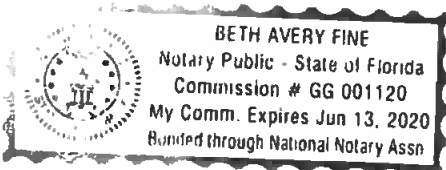
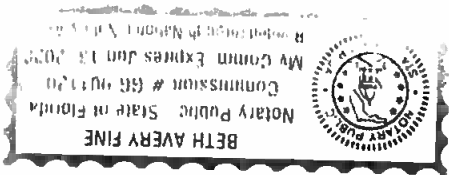
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STATE OF FLORIDA  
COUNTY OF St Johns

I hereby acknowledge that on this 7th day of December, 2016 before me personally appeared the above signed, as President and Secretary of Avila at Palencia Master Association, Inc., respectively, who are [ ] personally known to me or [X] who have produced Florida State license as identification, and who acknowledged before me that they executed the foregoing instrument and that they did take an oath.

WITNESS my hand and official seal in the County and the State last aforesaid this 7th day of December, 2016.

Beth Avery Fine  
Notary Public, State of Florida  
At Large



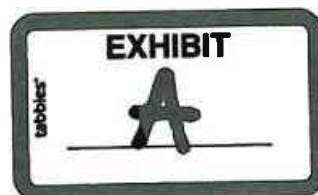
OR BK 2344 PG 2004

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THE LAND THUS DESCRIBED CONTAINS 20.34 ACRES, MORE OR LESS.



PREPARED BY AND RETURN TO:  
Jason E. Merritt, Esquire  
HOPPING GREEN & SAMS, P.A.  
119 South Monroe Street, Suite 300  
Tallahassee, FL 32301

Property Appraisers Parcel I.D.: 072420-0050

**QUIT CLAIM DEED**

THIS QUIT CLAIM DEED made this 29<sup>th</sup> day of January, 2016, by **MARSHALL CREEK SPE HOLDINGS, LLC**, a Florida limited liability company, whose address is 175 Hampton Point Drive, Suite 4, St. Augustine, Florida 32092, hereinafter called the grantor, to **AVILA AT PALENCIA MASTER ASSOCIATION, INC.**, a Florida not for profit corporation, whose address is 115 Calle El Jardin, St. Augustine, Florida 32095, hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

**WITNESSETH:**

That the grantor, for and in consideration of the sum of \$10.00 and other valuable consideration, receipt whereof is hereby acknowledged, hereby remises, releases, and quitclaims unto the grantee, all that certain land situate in St. Johns County, Florida, viz:

See attached **EXHIBIT A**

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

This conveyance is made subject to the covenants and restrictions contained in that certain Quit Claim Deed recorded in Official Records Book 3877, Page 1177, of the public records of St. Johns County, Florida.

**NOTE TO RECORDER:** This deed constitutes a conveyance of unencumbered realty as a gift and therefore only minimal documentary stamp tax is being paid hereon pursuant to the provisions of Rule 12B-4.014, Fla. Admin. Code.

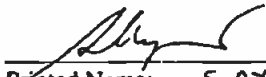
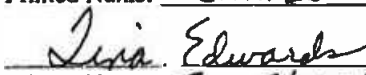


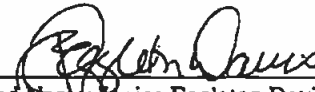
IN WITNESS WHEREOF, the grantor has hereunto set its hand and seal the day and year first above written.

Signed, Sealed and Delivered  
in our Presence:

**MARSHALL CREEK SPE HOLDINGS,  
LLC, a Florida limited liability company**

By: Severn Trent Environmental Services,  
Inc., as its Manager

  
Printed Name: S. AYRES  
  
Printed Name: Tina Edwards

By:   
Printed Name: Janice Eggleton Davis  
As its: Manager

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of JANUARY, 2016, by JANICE EGGLETON DAVIS as DISTRICT MANAGER of Severn Trent Environmental Services, Inc., as Manager of Marshall Creek SPE Holdings, LLC, a Florida limited liability company, on behalf of the company.

  
Signature of Notary Public

(SEAL)



JOSETTE MARTIN  
MY COMMISSION # FF 172114  
EXPIRES: November 13, 2018  
Sueded Thru Budget History Services

Josette Martin  
Name of Notary Public  
(Typed, Printed or Stamped)

Personally Known ☒ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_



**EXHIBIT A**

A PORTION OF SECTION 4, TOWNSHIP 6 SOUTH, RANGE 29 EAST, ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF LANDS DESCRIBED AS TRACT "A", ACCORDING TO DEED RECORDED IN BOOK 1709, PAGE 178 OF THE OFFICIAL RECORDS OF SAID COUNTY; THENCE THE FOLLOWING (2) COURSES ALONG THE WESTERLY BOUNDARY OF SAID TRACT "A": COURSE (1) - NORTH 19°03'38" EAST, 219.45 FEET; COURSE (2) - NORTH 24°35'18" WEST, 137.83 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, THENCE SOUTH 58°19'53" WEST, 134.79 FEET; THENCE SOUTH 80°27'27" WEST, 31.07 FEET; THENCE NORTH 64°43'30" WEST, 132.19 FEET; THENCE NORTH 38°08'26" WEST, 171.54 FEET; THENCE IN A NORTHERLY DIRECTION, ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 100.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 00°32'54" WEST, 121.18 FEET; THENCE NORTH 37°50'32" WEST, 300.49 FEET; THENCE IN A NORTHWESTERLY DIRECTION, ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 282.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 23°10'26" WEST, 142.82 FEET; THENCE NORTH 08°30'21" WEST, 117.42 FEET; THENCE IN A NORTHWESTERLY DIRECTION, ALONG THE ARC OF A CURVE, SAID CURVE BEING CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 130.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 23°30'21" WEST, 67.29 FEET; THENCE NORTH 38°30'21" WEST, 29.44 FEET; THENCE NORTH 51°29'18" EAST, 162.10 FEET; THENCE NORTH 24°29'45" WEST, 332.20 FEET; THENCE NORTH 37°50'32" WEST, 520.08 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF PALENCIA VILLAGE DRIVE, A VARIABLE WIDTH RIGHT-OF-WAY AS NOW ESTABLISHED, ACCORDING TO MAP THEREOF RECORDED IN MAP BOOK 41, PAGE 52 THROUGH 57 OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE IN A NORTHEASTERLY DIRECTION, ALONG THE ARC OF A CURVE IN SAID SOUTHERLY RIGHT-OF-WAY LINE, SAID CURVE BEING CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 670.00 FEET, A CHORD BEARING AND DISTANCE OF NORTH 53°10'29" EAST, 471.30 FEET; THENCE SOUTH 57°25'02" EAST, 194.52 FEET; THENCE SOUTH 82°39'17" EAST, 52.85 FEET TO THE AFOREMENTIONED WESTERLY BOUNDARY OF TRACT "A"; THENCE THE FOLLOWING (3) COURSES ALONG SAID WESTERLY BOUNDARY: COURSE (1) - SOUTH 47°53'37" EAST, 152.74 FEET; COURSE (2) - SOUTH 12°46'26" WEST, 127.50 FEET; COURSE (3) - SOUTH 30°38'33" EAST, 427.14 FEET TO THE EASTERLY BOUNDARY OF LANDS DESCRIBED AS PARCEL "39", ACCORDING TO DEED RECORDED IN BOOK 1958, PAGE 2168 OF THE OFFICIAL RECORDS OF SAID COUNTY; THENCE THE FOLLOWING (5) COURSES ALONG SAID EASTERLY BOUNDARY, THE SAME BEING SAID WESTERLY BOUNDARY OF TRACT "A": COURSE (1) - SOUTH 25°01'09" WEST, 148.58 FEET; COURSE (2) - SOUTH 49°05'43" EAST, 73.95 FEET; COURSE (3) - SOUTH 06°25'23" EAST, 250.43 FEET; COURSE (4) - SOUTH 31°28'58" WEST, 106.22 FEET; COURSE (5) - SOUTH 10°40'07" EAST, 117.36 FEET; THENCE,

CONTINUING ALONG SAID WESTERLY BOUNDARY OF TRACT "A", THE FOLLOWING (4) COURSES: COURSE (1) - SOUTH 32°08'30" EAST, 78.97 FEET; COURSE (2) - SOUTH 09°27'14" WEST, 191.15 FEET; COURSE (3) - SOUTH 18°41'45" EAST, 249.63 FEET; COURSE (4) - SOUTH 24°35'18" EAST, 73.71 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THOSE LAND SUBMITTED TO CONDOMINIUM FORM OF OWNERSHIP IN THOSE CERTAIN DECLARATIONS OF CONDOMINIUM OF EL JARDIN I, A CONDOMINIUM AS RECORDED IN OFFICIAL RECORDS BOOK 2345, PAGE 3, EL JARDIN II, A CONDOMINIUM AS RECORDED IN OFFICIAL RECORDS BOOK 2385, PAGE 140, EL JARDIN III, A CONDOMINIUM AS RECORDED IN OFFICIAL RECORDS BOOK 2494, PAGE 257, EL JARDIN IV, A CONDOMINIUM AS RECORDED IN OFFICIAL RECORDS BOOK 2538, PAGE 1973, EL JARDIN V, A CONDOMINIUM AS RECORDED IN OFFICIAL RECORDS BOOK 2589, PAGE 1272, LA TERRAZA I, A CONDOMINIUM AS RECORDED IN OFFICIAL RECORDS BOOK 2749, PAGE 226 AND RE-RECORDED IN OFFICIAL RECORDS BOOK 2803, PAGE 1717, AND LA TERRAZA II, A CONDOMINIUM AS RECORDED IN OFFICIAL RECORDS BOOK 2855, PAGE 1376, ALL OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.

TOGETHER WITH THE FOLLOWING:

A portion of Section 4, Township 6 South, Range 29 East, St. Johns County, Florida and being more particularly described as follows:

For a point of reference commence at the Northeasterly corner of lands described in deed recorded in the Official Records of said County in Book 2006, Page 618, the same being a point in the Southerly right-of-way line of Palencia Village Drive, a variable width right-of-way as now established, according to map thereof recorded in Map Book 41, Pages 52 through 57 of the Public Records of said County; Thence the following (6) courses along the Northeasterly and Easterly boundaries of last said lands: Course (1) – South 57°25'02" East, 194.52 feet; Course (2) – South 82°39'17" East, 52.85 feet; Course (3) – South 47°53'37" East, 152.74 feet; Course (4) – South 12°46'26" West, 127.50 feet; Course (5) – South 30°38'33" East, 427.14 feet; Course (6) – South 25°01'09" West, 148.58 feet; Thence North 45°19'19" West 65.26 feet to the Point of Beginning.

From the Point of Beginning thus described, Thence South 30°43'24" East, 202.00 feet; Thence South 59°16'36" West, 100.00 feet; Thence North 30°43'24" West, 202.00 feet; Thence North 59°16'36" East, 100.00 feet to the Point of Beginning.